# CHAPTER 1.0
# INTRODUCTION

## 1.1 PROJECT OVERVIEW

This joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) analyzes the potential environmental consequences associated with implementation of the San Elijo Lagoon Restoration Project (SELRP or proposed project). The SELRP has two components: the restoration of San Elijo Lagoon and the disposal or reuse of materials excavated as part of that restoration. The SELRP would restore ecological functions in San Elijo Lagoon (lagoon) within the San Elijo Lagoon Ecological Reserve (Reserve). The lagoon is located in the city of Encinitas, San Diego County, California (Figure 1-1). The study area is focused on the restoration areas and is composed of approximately 960 acres, primarily within the Reserve, including the lagoon. The lagoon is separated into four areas: the east basin, central basin, west basin, and coastal area (Figure 1-2). The Reserve is owned and managed by the California Department of Fish and Wildlife (CDFW), formerly the California Department of Fish and Game (CDFG) – 348 acres; County of San Diego Department of Parks and Recreation (County DPR) – 567 acres; and the San Elijo Lagoon Conservancy (SELC) – 62 acres.

Restoration of the lagoon has the potential to generate more than 1 million cubic yards (mcy) of excess material; various options are proposed for disposal or reuse of that material (e.g., offshore ocean and/or upland disposal, offshore stockpiling for future use, placement on the beach or nearshore, reuse on-site), depending on its characteristics and suitability. On-site reuse of materials would occur for construction of transition and nesting areas. Construction of an on-site overdredge pit is also evaluated, where feasible, which would provide sand for off-site reuse within the coastal area, or littoral cell, while accommodating disposal of finer-grained material on-site. A secondary study area encompasses off-site locations that have been identified for potential materials disposal or reuse (Figure 1-3).

The lagoon is a regionally important coastal wetland with substantial human and environmental resources. It provides habitat for sensitive plants and wildlife, as well as recreation opportunities within the Reserve. Lagoon functions have become compromised over time, as development and infrastructure constraints have affected the ecosystem and reduced habitat diversity. The SELRP is an effort to restore lagoon functions and services to the extent practicable given the constraints of surrounding development and activities. The proposed project aims to enhance tidal exchange of the lagoon with the ocean by modifying existing constraints, such as a limited channel network and infrastructure due to Coast Highway 101, the North County Transit District (NCTD)

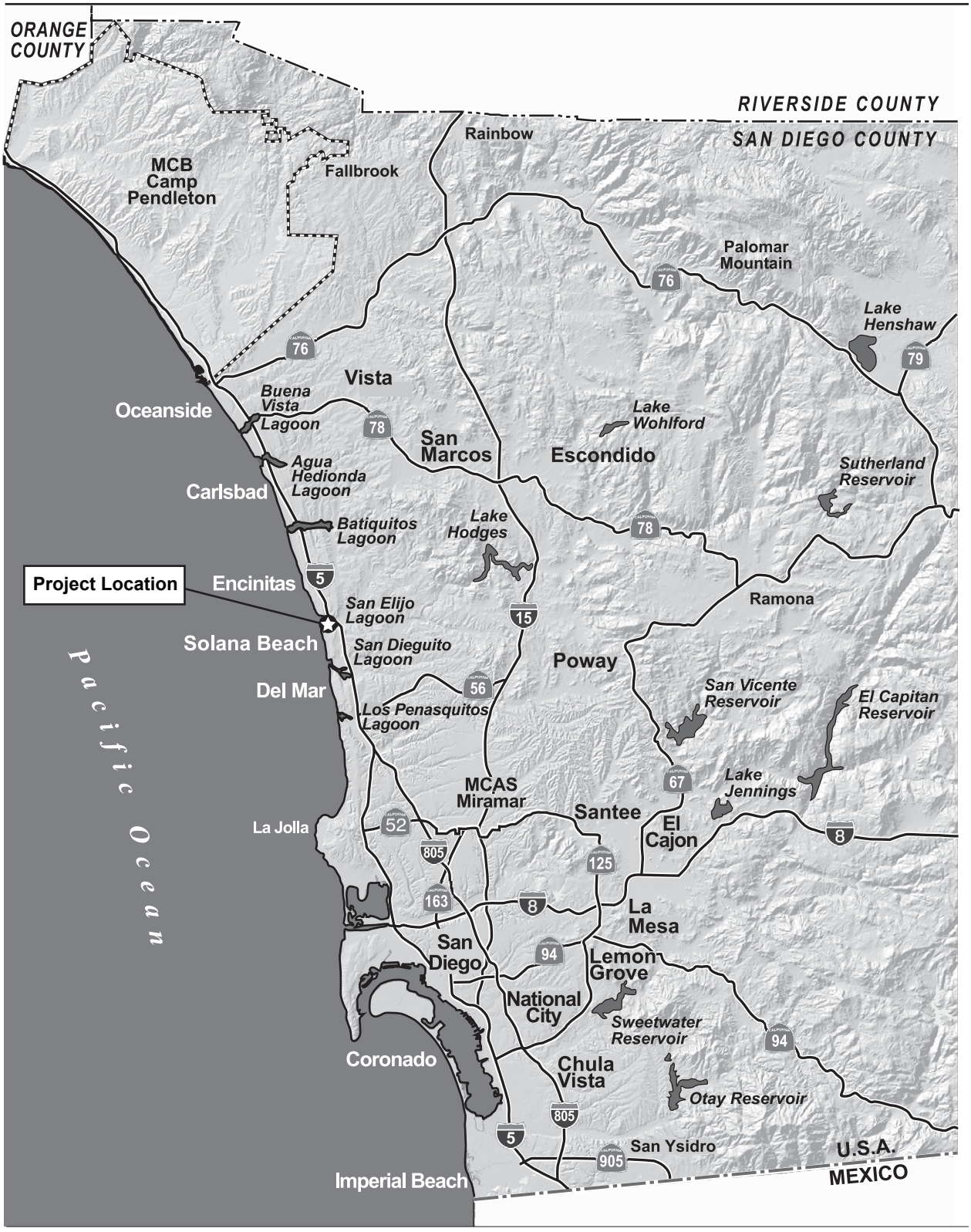
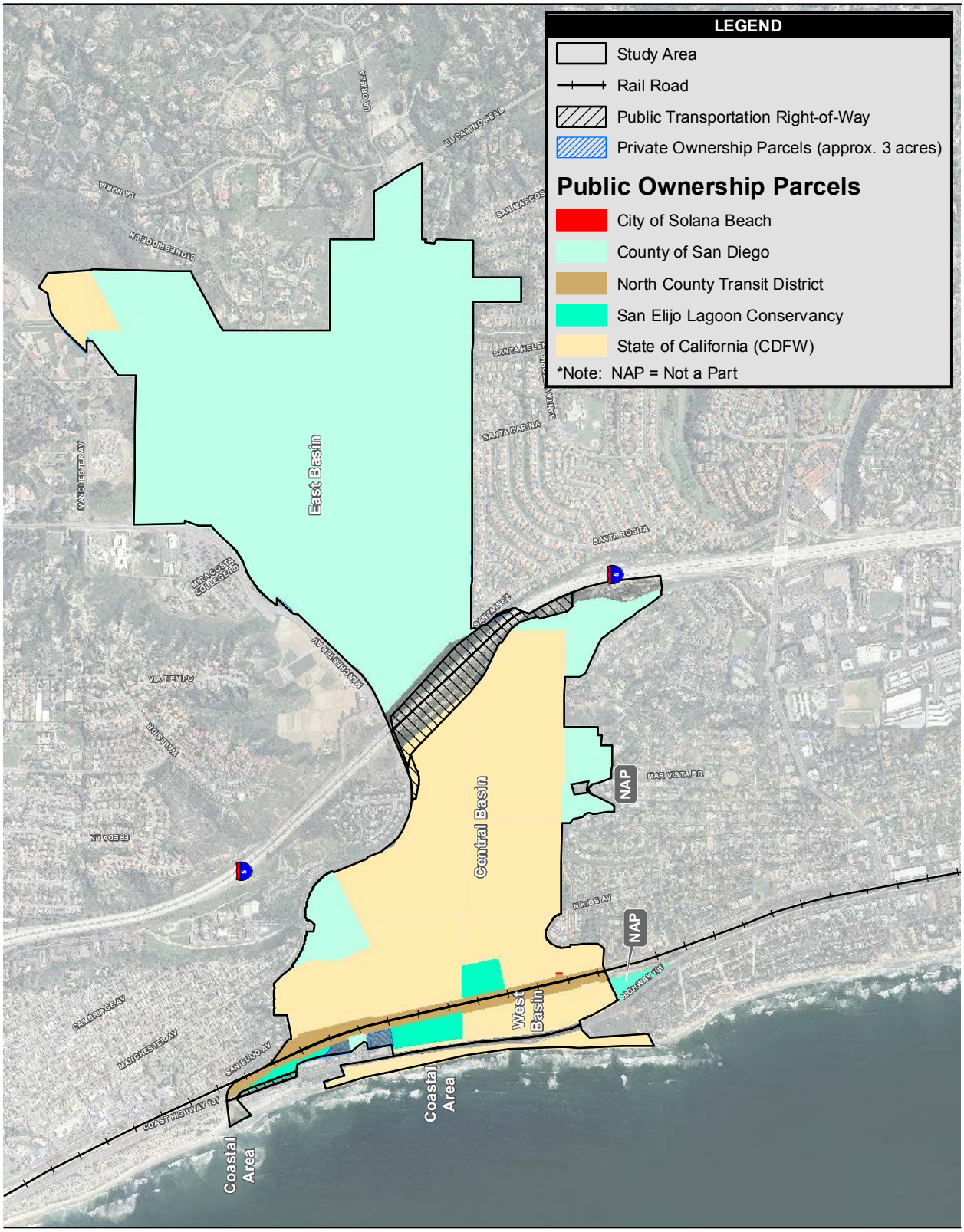



**Figure 1-1**
**Regional Map**




Source: Landiscor 2010; SanElijoConservancy; SanGIS; AECOM 2012

2,000 1,000 0 2,000 Feet

Scale: 1:24,000; 1 inch = 2,000 feet

**Figure 1-2**
**San Elijo Lagoon Restoration Project**
**Study Area and Land Ownership**



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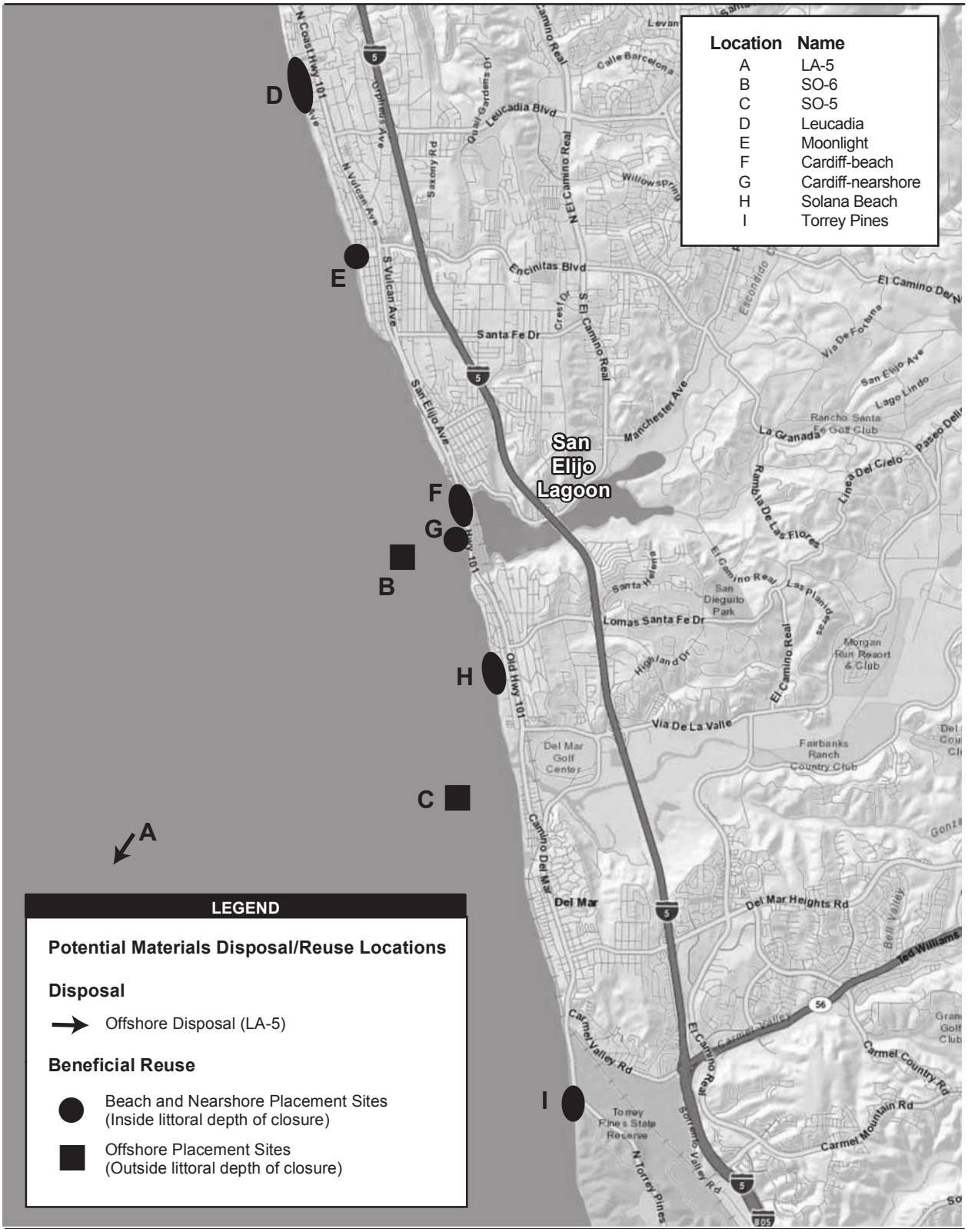


Source: ESRI; SANGIS; AECOM 2012

1 0.5 0 1 Miles

Scale: 1:24,000; 1 inch = 2,000 feet

**Figure 1-3**
**SELRP Materials Disposal/Reuse Study Areas**


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railroad, Interstate 5 (I-5), and a weir owned by CDFW. The project aims to create a more resilient ecosystem that can accommodate future climate change scenarios, including sea level rise. The project incorporates periodic maintenance and monitoring, as well as an adaptive management component, to provide for maintenance of enhancements made as part of the SELRP into the future.

Restoration of the lagoon will require issuance of permits from the U.S. Army Corps of Engineers (Corps) and San Diego Regional Water Quality Control Board (RWQCB) pursuant to Sections 404 and 401 of the Clean Water Act (CWA) for discharge of fill materials into "waters of the U.S.," as well as Section 10 of the Rivers and Harbors Act (RHA) for work in, over, or under waters of the U.S. In addition, a permit consistent with Section 103 of the Marine Protection, Research, and Satuaries Act (MPRSA) may be required for ocean disposal, depending on the alternative chosen. The Corps is required to consult with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act (ESA) for potential impacts on federally endangered or threatened species, and with NMFS pursuant to the Magnuson-Stevens Act for potential impacts to Essential Fish Habitat (EFH). Accordingly, these regulatory and wildlife entities have key interests in the proposed project.

This EIR/EIS has been prepared in accordance with the California Environmental Quality Act (CEQA) of 1970 (Public Resources Code [PRC] Section 21000 et seq.) and the Guidelines for Implementation of CEQA published by the Resources Agency of the State of California (California Administrative Code Section 15000 et seq.). The document also meets the requirements of the National Environmental Policy Act (NEPA) (42 United States Code [USC] Section 4321 et seq.) in conformance with the Council for Environmental Quality's (CEQ) Regulations for Implementing NEPA (40 Code of Federal Regulations [CFR] Part 1500 et seq.) and the Corps' NEPA Implementation Procedures (33 CFR Part 325, Appendix B).

County DPR is part owner of the Reserve and manages it in coordination with the SELC and CDFW. As owner, County DPR will issue a right of entry permit for implementation of the project and will certify the EIR in compliance with CEQA. Upon certification, County DPR will issue Findings and a Statement of Overriding Considerations, as necessary, with issuance of the Notice of Determination (NOD).

An application for discharge into jurisdictional waters of the U.S. was submitted to the Corps on August 2, 2012. The federal action requested from the Corps consists of the issuance of a long-term Department of the Army (DA) standard individual permit pursuant to Section 404 of the CWA and Section 10 of the RHA for the SELRP and adaptive monitoring and maintenance program. The SELRP would result in the discharge of dredged or fill material into San Elijo

Lagoon and the Pacific Ocean, which are considered waters of the U.S. pursuant to the CWA (33 USC Sections 1251–1387). If offshore disposal is also required, a DA permit pursuant to Section 103 of the MPRSA will also be requested. Pursuant to NEPA, this EIR/EIS fulfills the Corps' responsibility to document a reasonable range of project alternatives, and provide full and fair discussion of anticipated environmental impacts within the Corps' NEPA scope of analysis. The Corps will also use this document in its permit evaluation process, which incorporates factors indicated in 33 CFR Section 320.4: public interest review; effects on wetlands; fish and wildlife; water quality; historic, cultural, scenic, and recreational values; consideration of private ownership; effects on coastal zones; and other federal, state, or local requirements.

A Sampling and Analysis Plan (SAP) has been prepared for the SELRP to provide a preliminary evaluation of the suitability of material underlying the lagoon for beneficial reuse within the littoral zone (e.g., beaches, nearshore, or for offshore stockpiling for future use in the littoral zone) or disposal at LA-5, a U.S. Environmental Protection Agency (EPA)-approved ocean disposal site located off San Diego. The May 2013 report summarizing the SAP for the SELRP is included as Appendix A.

Project alternatives evaluated in this document and the analysis of environmental impacts also fulfill the Corps' responsibility to ensure compliance with the CWA Section 404(b)(1) Guidelines. The Section 404(b)(1) Guidelines state that no discharge of dredged or fill material will be permitted if there is a practicable alternative to the proposed discharge that would have a less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant environmental consequences (40 CFR Section 230.10[a]). Temporary and permanent impacts to the physical and biological attributes of the aquatic environment are being evaluated by the Corps in preparing the Draft Section 404(b)(1) Alternatives Analysis in accordance with the Section 404(b)(1) Guidelines. The draft Section 404(b)(1) Alternatives Analysis will be provided in the Final EIR/EIS, and the final Section 404(b)(1) Alternatives Analysis will be provided with the Corps' Record of Decision (ROD). The ROD will document the Corps' decision on the proposed project, including issuance or denial of permit and/or required environmental mitigation commitments.

## 1.2 PROJECT PURPOSE AND NEED, CORPS BASIC AND OVERALL PURPOSE, AND CEQA PROJECT OBJECTIVES

Implementing regulations for NEPA published by CEQ states that the Purpose and Need section in an EIS "shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action" (40 CFR Section 1502.13). In addition to defining the purpose of the proposed project pursuant to NEPA, the Corps must evaluate the proposed discharge of dredged or fill material for its compliance with

the CWA Section 404(b)(1) Guidelines (40 Part 230). A critical initial part of evaluating this compliance is identifying the basic and overall purposes of the proposed project. The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed action and is used by the Corps to determine whether an applicant's project is water dependent (i.e., whether it requires access or proximity to or siting within a special aquatic site). Section 15124[b] of the CEQA Guidelines requires that the project description contain a statement of objectives, including the underlying purpose of the proposed project.

This section of the EIR/EIS provides the Purpose and Need (NEPA and Corps 404[b][1]) and the CEQA project objectives for the proposed project. Purpose and Need are discussed separately to satisfy regulations.

**Need for the Project**

San Elijo Lagoon is a coastal wetland with substantial biological and ecological resources that are important to the region. It is located at the terminus of the Escondido Creek and La Orilla Creek at the Pacific Ocean. The lagoon and adjacent uplands compose the Reserve, which provides habitats that support sensitive species, including federally threatened and endangered plants and animals, and resident and migratory wildlife. As typical of coastal lagoons in southern California, San Elijo Lagoon has a relatively narrow connection to the ocean and a confluence of freshwater flows from upstream. Various transportation infrastructures that traverse the lagoon inhibit tidal flow up into the lagoon. A mosaic of habitat and ecosystems occurs, from open water to dense freshwater marsh. The habitat is linked directly to tidal inundation and frequency. The species that utilize this mosaic vary by habitat. In addition, the Reserve provides recreational opportunities, including more than 7 miles of public hiking trails.

Over the past several decades, the lagoon system has gradually degraded due to the expansion of urban development within the upstream watershed. This development has altered the hydrology and, subsequently, the physical and biological functions of the lagoon system. Water quality has decreased and habitats within the lagoon have been rapidly converting to a less diverse habitat mosaic with greater freshwater influence. Mechanical breaching of the ocean inlet is routinely performed to maintain an open inlet and tidal flushing within the lagoon. That activity has subsequently lowered overall water levels in the lagoon, allowing habitats to become vegetated. While an open inlet allows freshwater to exit the lagoon and salt water exchange to occur more frequently, severe tidal muting[1] occurs. Muted tidal conditions, changes in inundation frequency, and increasing freshwater inputs from upstream development have resulted in the proliferation of freshwater marsh habitat dominated by cattail (*Typha* spp.) and the expansion of low- and mid-

[1] Tidal muting refers to a tide range that is lower in one area (e.g., wetland) than an adjacent tidal water body (e.g., ocean) due to structures or other hydrologic characteristics that inhibit the exchange of water between the two.

marsh at the expense of mudflat areas. If measures are not taken to improve lagoon hydrology, muted tidal exchange and restricted water circulation will continue to degrade the physical and biological functions of the lagoon. Freshwater marsh and higher elevation saltmarsh habitats will likely continue to expand and dominate the system, at the expense of more rare intertidal habitats. Sensitive plant and animal species currently dependent on the aquatic and intertidal habitats within the lagoon would be adversely affected by this conversion.

**NEPA Purpose of the Project**

The purpose of the proposed project is to enhance and restore the physical and biological functions and services of San Elijo Lagoon by increasing the tidal prism to support a diverse range of native intertidal and transitional habitats.

**Overall and Basic Project Purposes (Corps' Section 404(b)(1))**

The basic project purpose of the SELRP is environmental restoration of a coastal lagoon; this is, by definition, a water-dependent activity. Although special aquatic sites would be impacted by the proposed project, because the activity is water dependent, the rebuttable presumptions do not apply. The overall project purpose serves as the basis for the Corps' Section 404(b)(1) Alternatives Analysis and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project. The overall project purpose allows for a reasonable range of alternatives to be analyzed. For this proposed project, the NEPA purpose is also the Corps' overall project purpose.

**CEQA Goals and Objectives**

The overarching goal, or purpose, of the proposed project is to protect and restore, then maintain via adaptive management, the San Elijo Lagoon ecosystem and its adjacent uplands to perpetuate native flora and fauna characteristics of southern California, and restore and maintain estuarine and brackish marsh hydrology. This goal can be further refined into four categories of objectives:

1. Physical restoration of lagoon estuarine hydrologic functions
2. Biological restoration of habitat and species within the lagoon
3. Management and maintenance to ensure long-term viability of the restoration efforts
4. Maintenance of recreational and educational opportunities

These four categories of objectives are further defined below.

*1. Physical Objectives*

A. Open the lagoon mouth regularly, or create a permanently open mouth, to maximize the overall functions and services of the lagoon in light of existing and future constraints.

B. Expand the acreage of tidal habitats by enlarging the tidal prism, grading appropriate elevations and contours to support a diversity of desired tidal habitats, and managing freshwater inputs.

C. Improve water quality, by restoring tidal circulation and reducing high bacteria counts and the potential for mosquito-borne disease.

D. Ensure that no adverse change to current flood protection occurs as a result of the project, specifically to existing or proposed infrastructure and adjacent development.

E. Minimize the disturbance of cultural resources.

*2. Biological Objectives*

A. Provide a natural gradient of habitats that considers climate change, anticipated sea level rise, heterogeneity of habitats, and tidal channels of various orders.

B. Enhance habitats for native species, including rare and endangered species, to maintain species diversity that is appropriate to habitat distribution and regional needs.

C. Provide long-term protection of the functions and services of the Reserve from adjacent recreational and other anthropogenic land uses.

*3. Management and Maintenance Objectives*

A. Develop a cost-effective management and maintenance plan for supporting the proposed habitat enhancements, curtailing growth and expansion of exotic species, and maintaining regular tidal flow.

B. Design and implement a biological and hydrological monitoring program to assess the success of restoration efforts and to inform adaptive management decisions.

*4. Recreational Access and Education Objectives*

A. Minimize impacts to recreational opportunities.

B. Maintain public access to the lagoon and educational opportunities that are consistent with resource protection needs and requirements.

## 1.3 LEAD, RESPONSIBLE, AND TRUSTEE AGENCIES

Because of federal and local discretionary actions, the proposed project requires evaluation pursuant to both NEPA and CEQA. Under NEPA and CEQA, a lead agency is any public agency that is principally responsible for carrying out or approving a project. The Corps is the federal lead agency responsible for compliance with NEPA. County DPR is the lead agency responsible for compliance with CEQA. Given the proposed project's complexity and range of potentially significant issues, the appropriate CEQA environmental document is an EIR. An EIS is required under NEPA because preliminary assessment of the project identified potential significant impacts to resources, including air quality and biological resources. The Corps and County DPR have agreed to jointly prepare this EIR/EIS to address the federal, state, and local requirements for environmental analysis and permitting.

Several other agencies have special roles with respect to the proposed project and may use this EIR/EIS as the basis for their decisions to issue approvals and/or permits that might be required. Section 15381 of the CEQA Guidelines defines a responsible agency as follows:

> … a public agency which proposes to carry out or approve a project, for which a lead agency is preparing or has prepared an EIR or negative declaration. For the purposes of CEQA, the term 'responsible agency' includes all public agencies other than the lead agency which have discretionary approval power over the project.

Additionally, Section 15386 of the CEQA Guidelines defines a trustee agency as follows:

> … a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the state of California.

Responsible and trustee federal, state, and local agencies that may rely on this EIR/EIS in a review capacity or as a basis for issuance of a permit for the proposed project include the following:

- U.S. Fish and Wildlife Service (USFWS)
- National Marine Fisheries Service (NMFS)
- Environmental Protection Agency (EPA)
- U.S. Coast Guard (USCG)
- California Coastal Commission (CCC)
- California Department of Fish and Wildlife (CDFW)

- California Regional Water Quality Control Board (RWQCB)
- California Department of Transportation (Caltrans)
- California Department of Conservation (DOC)
- California Department of Boating and Waterways (DBW)
- California State Parks
- State Lands Commission (SLC)
- State Water Resources Control Board (SWRCB)
- State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO)
- State Mining and Geology Board (SMGB)
- San Diego Association of Governments (SANDAG)
- North County Transit District (NCTD)
- San Diego Air Pollution Control District (SDAPCD)
- City of Encinitas
- City of Solana Beach

## 1.4 SCOPING PROCESS, PUBLIC INVOLVEMENT, AND ISSUES

Throughout the environmental process and during the preparation of this EIR/EIS, County DPR and the Corps have solicited input on key issues and concerns from public agencies, stakeholder and interest groups, and the general public. The public scoping process was designed to help determine the range of issues addressed in the EIR/EIS. Additional stakeholder meetings assisted in defining concerns about the proposed project. The different aspects of public scoping discussed in this section include the Notice of Preparation (NOP) consistent with CEQA and Notice of Intent (NOI) consistent with NEPA, public scoping meetings, and stakeholder coordination. Early and open consultation with relevant agencies, organizations, and individuals assisted in defining the scope of this EIR/EIS.

### Notice of Preparation and Notice of Intent

The County DPR and the Corps initiated the scoping process on November 3, 2011, through the circulation of an NOP and NOI. The NOP was received by the State at the California Office of Planning and Research (OPR) on November 4, 2011. The Clearinghouse is responsible for monitoring compliance of state agencies. The Clearinghouse assigned state identification number SCH No. 2011111013 to this EIR/EIS. The NOI was received by the Office of the Federal Registrar (OFR) National Archives and Records Administration (NARA) on November 3, 2011, and was published in the Federal Register, Vol. 76, No. 215 on November 7, 2011. The scoping period extended through December 18, 2011, exceeding the 30-day period requirement by law.

The NOP and NOI provide formal notification to federal, state, and local agencies involved with funding or approval of a project, and to other interested organizations and members of the public, that an EIR/EIS will be prepared. The NOP and NOI are intended to encourage interagency communication concerning a proposed project and provide sufficient background information so that agencies, organizations, and individuals can respond with specific comments and questions on the scope and content of the EIR/EIS. A copy of the NOP and the NOI are provided in Appendix B, as well as the written comments received during the public scoping period.

**Public Scoping Meetings**

Three public scoping meetings were held to provide additional opportunities for agency and public interaction and input. These meetings, identified in Table 1-1, were held during the public scoping period at various times and locations to encourage public input.

**Table 1-1**
**Scoping Meeting Dates and Locations**

| Date | Time | Location |
|---|---|---|
| November 15, 2011 | 1 p.m. | U.S. Fish & Wildlife Service, Conference Room 1<br>6010 Hidden Valley Road, Suite 101<br>Carlsbad, CA 92011 |
| November 29, 2011 | 6 p.m. | City of Encinitas Community Center<br>1140 Oakcrest Park Drive<br>Encinitas, CA 92024 |
| December 1, 2011 | 6 p.m. | Holiday Inn Express Meeting Room<br>621 South Coast Highway 101<br>Solana Beach, CA 92075 |

General verbal and specific written comments were accepted at these meetings. Additionally, written comments were accepted via email and mail throughout the scoping period.

**Stakeholder Coordination**

A series of stakeholder meetings were held to encourage input from regulatory agencies and interested organizations during the planning process for the proposed project. These meetings were initiated during the alternatives development and planning phase of the proposed project to ensure that relevant issues and concerns were incorporated into project design. Focused meetings continue to be held to ensure agency stakeholder coordination through the environmental review process. In addition to the lead agencies and the project applicant, project stakeholders include representatives from various agencies and organizations, including those listed in Section 1.3, above.

## Comments Received during Scoping Process

Comments received during the EIR/EIS scoping period included general verbal comments from scoping meetings as well as written comments from the scoping meetings and in separate responses to the NOP and/or NOI. Numerous interested parties provided input on the proposed project, including federal, state, and local agencies; local stakeholder groups; and individuals. A copy of written comments submitted as part of the scoping process is included in Appendix B. The main issues raised during the scoping process are summarized by issue area in Table 1-2.

**Table 1-2**
**Summary of Public Comments Received during the SELRP EIR/EIS Scoping Process**

| Public Comments by Environmental Topic or Issue Area | Section Where Addressed in EIR/EIS |
|---|---|
| ***Aesthetics/Visual Impacts*** | |
| For project alternatives, analyze the visual impacts and long-term implications of structures needed to implement each alternative. | Section 3.9; Section 4.3 |
| ***Air Quality/Greenhouse Gas Emissions/Sea Level Rise*** | |
| Evaluate the effects of climate change and sea level rise not only within the project area, but also the impact along the shoreline and Coast Highway 101 to determine how the project will affect the Coast Highway, State Parks land, and the existing inlet. | Section 3.16; *Sea Level Rise Analysis* (M&N 2010) |
| Using the three sea level rise curves required to be evaluated for federal projects (refer to Corps Shoreline Project for Solana Beach and Encinitas) [currently known as the Storm Damage Reduction and Beach Nourishment Project], include a wave run-up and tsunami inundation and damage analysis for each wave energy scenario for each project alternative. | Tsunami/coastal damage is addressed in Section 3.3 and sea level rise is addressed in Section 3.16; this specific requirement is not applicable to the SELRP. |
| Analyze objectionable odors caused by low tides. | Section 3.11 |
| ***Biological Resources*** | |
| Provide an explanation of habitat transition occurring within the lagoon over the last several decades and the impact on lagoon resources. | Section 1.2; Section 2.1; Section 3.6 |
| Address concern about the use and introduction of invasive plants (e.g., ice plant). | Section 2.11; Section 3.6 |
| Discuss the existing freshwater and saltwater habitat within the project area and what it will consist of after project implementation. | Section 2.1; Section 3.6 |
| Analyze potential impacts to offshore biological resources (e.g., eel grass, reefs, marine life). | Section 3.6 |
| Discuss the project's impact on insect life, specifically reduction of mosquitoes and flies. | Section 3.15 |
| Discuss the regional perspective of existing amounts of estuarine and brackish marsh habitat and the ability of the project to meet regional needs for these habitat types. | Section 1.2 describes the purpose and objectives of the project. |
| Analyze the project's impacts and benefits in the context of the goals of Natural Community Conservation Program (NCCP) planning efforts. | Section 3.6 |
| Explain how the project will avoid and/or minimize short-term and long-term impacts to Belding's savannah sparrow and light-footed clapper rail. | Section 3.6; Section 3.6 |
| Prepare a jurisdictional delineation and include mitigation measures to compensate for impacts to wetlands and jurisdictional waters. | Section 3.6; Appendix G |

| Public Comments by Environmental Topic or Issue Area | Section Where Addressed in EIR/EIS |
|---|---|
| Disclose project impacts to the following California Endangered Species Act-listed species, and provide mitigation and monitoring that meet the requirements of an incidental take permit (ITP): coastal California gnatcatcher (*Polioptila californica californica*), Belding's savannah sparrow (*Passerculus sandwichensis beldingi*), light-footed clapper rail (*Rallus longirostris levipes*), least Bell's vireo (*Vireo bellii pusillus*), California least tern (*Sterna antillarum browni*), and southwestern willow flycatcher (*Empidonax traillii extimus*). | Section 3.6 |
| Pursuant to Section 3511 of the California Fish and Game Code, the California Endangered Species Act-listed light-footed clapper rail and California least tern are also designated as State Fully Protected species. This designation prohibits "take" or possession of these species at any time; that is, there is no take authorization available from CDFW. | Section 3.6 |
| Provide a complete assessment of flora within and adjacent to the project area following Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities, as prepared by the California Natural Resources Agency and CDFW. | Section 3.6 |
| Provide a discussion of direct, indirect, and cumulative impacts anticipated to biological resources. | Section 3.6; Section 5.3 |
| Include mitigation and minimization measures for impacts to biological resources as provided by CDFW. | Section 3.6.5 |
| ***Construction Methods: Grading, Dredging, and Materials Placement*** | |
| Provide a discussion of construction methods in the project description. | Section 2.10 |
| Include a discussion of a dredging plan that provides details and requirements for ongoing dredging and maintenance activities, and analyze impacts associated with these ongoing activities. | Sections 2.4, 2.5, 2.6; Section 2.11; Chapter 3 |
| Prepare a grading plan and include an erosion and sediment control plan and program in compliance with the latest State Construction Permit. | This requirement is discussed in Section 3.2 and Section 3.4; actual preparation of the plan occurs once the contractor has been identified. |
| Discuss placement of dredged materials that are considered compatible for placement on the nearby beaches, and analyze impacts of beach sand placement on the nearshore environment. | Section 2.2; Section 2.9; Chapter 3 |
| Consider phasing construction of the project to minimize impacts related to sensitive species. | Section 2.10 |
| ***Cultural Resources*** | |
| Engage in early consultation with Native American tribes to identify the potential for cultural resources to be present within the project area. | Section 3.7 |
| ***Geotechnical/Seismic Hazards and Public Safety*** | |
| The existing Coast Highway 101 Bridge (San Elijo Lagoon Bridge No. 57C-210) is susceptible to collapse in a seismic event. Dredging beyond what is currently performed at the bridge increases the likelihood of structural failure. This should be analyzed for each project alternative. | Section 3.4 |
| Consider fire dangers to surrounding structures when choosing plant life for the project. | Section 3.15 |
| National Flood Insurance Program (NFIP) floodplain management building requirements must be adhered to if structures are built within a Regulatory Floodplain. | Section 3.2 |
| Explain the project's impacts with respect to erosion at San Elijo State Beach campgrounds, access to Cardiff State Beach, and potential effects to public safety and aquatic resources. | Section 3.2; Section 3.3 |

| Public Comments by Environmental Topic or Issue Area | Section Where Addressed in EIR/EIS |
|---|---|
| ***Hydrology and Water Quality*** | |
| Prepare a hydrology study that includes an HEC-RAS analysis, modeling the upstream and downstream flood water elevations. | The RMA 2 model was used; it is discussed in Section 3.2. |
| Analyze project impacts related to the hydrology of the lagoon, currently identified and emergent water quality pollutants of concern, impacts on the larger watershed, and overall coastal water quality. | Section 3.2; Section 3.3 |
| Analyze impacts to water quality from pet waste, agricultural runoff, and freeway runoff. | NA |
| ***Land Use*** | |
| Demonstrate consistency with existing local land use plans and identify inconsistencies, if any. | Section 3.1 |
| ***Noise*** | |
| Analyze noise effects on surrounding land uses due to use of heavy equipment operation during project implementation. | Section 3.12 |
| ***Permitting*** | |
| Adhere to encroachment permitting process for work performed in the Caltrans right-of-way. | Chapter 1 |
| Coordinate with San Diego Gas & Electric (SDG&E) and the California Public Utilities Commission to address required permitting or permit exemptions if relocation of SDG&E facilities is needed. | Section 3.14 |
| Complete written notification to CDFW for determining need of Lake and Streambed Alteration Agreement. | Section 3.6 |
| Permit required from USCG if alterations are needed to bridges in/over/on navigable waters of the U.S. (permitting process time is 9 to 12 months). | Chapter 1 |
| ***Project Description and Design*** | |
| Describe the approach to determining inlet location and design for project alternatives. | Section 2.2; Section 2.4; Section 2.5; Section 2.6 |
| Incorporate sea level rise estimates into project design. | Chapter 1; Chapter 2 |
| Consider removing the dike in the east basin. | Chapter 2 |
| Consider removing the settling pond in the central basin. | Section 2.4; Section 2.5; Section 2.6 |
| ***Project Schedule and Implementation Coordination with Other Projects*** | |
| Describe the anticipated project schedule, duration of dredging, and maintenance activities. | Section 2.10 |
| Describe the relationship between the project's implementation and the implementation of larger transportation projects (i.e., improvements to I-5, Coast Highway 101, and double-tracking of the Coaster). | Section 2.3 |
| Consider the timing of the Corps' Solana Beach and Encinitas Shoreline Protection Project and analyze whether the dredged material from the lagoon could be suitable for beach placement to supplement the volumes that would otherwise be excavated from an offshore borrow site. | Section 2.2; Chapter 5 |
| ***Public Services and Utilities*** | |
| Coordinate with SDG&E regarding closures, alterations, or changes to existing access roads, pads, or other supporting rights-of-way needed. | Section 3.14 |
| Conduct engineering evaluation to identify issues and protection measures to address how the change in tidal flushing or enhancements may cause structural integrity issues to SDG&E facilities. | Section 3.14 |
| Ensure the protection of utilities (i.e., overhead utilities lines and existing buried electronic distribution lines) during and after project construction. | Section 3.14 |
| Maintain access to pump stations and force mains for maintenance during and after project construction. | Section 3.14 |

| Public Comments by Environmental Topic or Issue Area | Section Where Addressed in EIR/EIS |
|---|---|
| Consider impacts to the pipeline and associated appurtenances crossing the lagoon to the San Elijo Ocean Outfall from dredging and restoration activities. | Section 3.14 |
| Consider existing SDG&E high-pressure gas lines and electric transmission lines present within the project area; consider undergrounding power lines across the central basin portion of the lagoon. | Section 3.14 |
| Consider impacts to existing pipeline and associated appurtenances, and establishment of access road to existing pipeline for maintenance. | Section 3.14 |
| ***Recreation/Community Access*** | |
| Analyze potential impacts related to surfing, fishing, boating, and surfing-related tourism; running/walking; and birding. | Section 3.1 |
| Analyze impacts to Cardiff Reef as they relate to surfing and surf quality. | Section 3.1 |
| Surf monitoring should be considered post-project for at least 5 years. | Section 3.1 |
| Consider potential impacts associated with removal of the dike in the east basin and the effects of removal related to community access. | Section 3.1 |
| Consider implementation of upland buffer (minimum 100 feet) as measured from the edge of the natural and revegetated wetland habitat within the project footprint with public access and development restrictions. | Section 3.6 |
| Consider establishment of an access road or walking trail along existing wastewater treatment pipeline to provide better access for maintenance of the outfall infrastructure and to enhance the overall walkability of lagoon. | Chapter 2; Section 3.1 |
| Analyze impacts to beach access and trail system access. | Section 3.1 |
| Consider recreational enhancements such as fishing opportunities and kayaking within the lagoon. | This issue is not addressed; these activities are specifically prohibited within the lagoon by law. |
| Assess impacts of the removal of the existing cement land bridge on community access. | Section 3.1 |
| Analyze impacts to pedestrian access for each project alternative and consider the inclusion of a safe and visually attractive pedestrian walkway from the beach to Coast Highway 101. | Section 3.1 |
| Consider the addition of trail across the central basin (north/south). | Section 3.1 |
| Consider the elevation of trails to boardwalks to reduce impacts to wetlands, where feasible. | This issue is discussed in Section 3.1; new trail segments would be elevated. |
| Evaluate the project's compatibility with CDFW's Marine Protected Areas. | Section 3.1 |
| ***Suggested Project Alternatives*** | |
| Discuss the range of reasonable alternatives, including the No Project/No Federal Action Alternative. | Section 2.3 Chapter 4 |
| Consider a project alternative, such as Alternative 1A, but also with these additional options in the central basin and one in the east basin:<br>• use the existing tidal inlet<br>• create a north-south-trending tidal channel in the west basin<br>• enlarge the channel linking the central basin and east basin beneath I-5<br>• enhance existing tidal channels in the east basin<br>• enhance existing tidal channels in the central basin<br>• restore nonvegetated tidal mudflat habitat in the central portion of the central basin by removal of vegetation and reduction of substrate elevation to that necessary to maintain a nonvegetated intertidal state<br>• enhance drainage and management capabilities in the east basin by replacing and adding additional flood gate valves and culverts to the existing dike. | Chapter 2 |

| Public Comments by Environmental Topic or Issue Area | Section Where Addressed in EIR/EIS |
|---|---|
| ***Transportation*** | |
| Discuss the need for road improvements to off-set increased traffic volumes and discuss the on- and/or off-site impacts to sensitive species or habitats as a result of necessary road improvements. | Section 3.10 |
| Include a description of access routes to construction and staging areas. | Section 2.10 |
| Consider traffic management during construction. | Section 3.10 |
| Include double-tracking of the Coaster concurrently with the project. | Chapter 1; Section 5.2 |
| ***Other Issues*** | |
| If an offshore mitigation reef is determined to be a necessary project component, placement of this reef is suggested in an area offshore and down the coast of the lagoon. | NA |
| Describe lead agencies' roles and responsibilities. | Section 1.3 |
| Add USCG as a cooperating agency under NEPA and include in scoping correspondence. | Section 1.3 |

## 1.5 REGULATORY OVERVIEW, COMPLIANCE WITH APPLICABLE STATUTES, AND PERMIT REQUIREMENTS

One of the objectives of the CEQA/NEPA process is to ensure that a proposed project and its alternatives are consistent with relevant regulations, policies, and plans. Various approvals and permits would be necessary for implementation of the proposed project. Table 1-3 lists the applicable statutes and permit or approval requirements. Those policies and regulations that require specific actions, permits, or consultation by the lead agencies or project proponent are further discussed following the table and describe the process needed to meet requirements.

Full descriptions of regulatory laws, statutes, policies, and plans and the issue area to which they are applicable are included in Appendix C. The specific analysis of how each regulation, policy, or plan applies to the proposed project and its alternatives is included in each appropriate individual resource discussion in Chapter 3.

**Table 1-3**
**Federal, State, and Local Project Approvals and Permits Required**

| Agency | Permit/Approval |
|---|---|
| ***Federal*** | |
| U.S. Army Corps of Engineers (Corps) | • Permit under Section 404 of the Clean Water Act, 33 United States Code (USC) Section 1344<br>• Section 10 of the Rivers and Harbors Act of 1899, 33 USC Section 403<br>• Section 103 of the Marine Protection, Research, and Sanctuaries Act, 33 USC Section 1413 (Alternative 1A only)<br>• Issue Record of Decision<br>• Fish and Wildlife Coordination Act, 16 USC Sections 661–666 |
| National Marine Fisheries Service | • Magnuson-Stevens Fishery Conservation and Management Act, as amended 1996 (Public Law 104-267); Consultation<br>• Endangered Species Act, 16 USC Sections 1531–1544 Section 7 Consultation with the federal lead agency (i.e., Corps) |

| Agency | Permit/Approval |
|---|---|
| State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO) | • National Historic Preservation Act of 1966, Section 106 Consultation with SHPO/THPO (36 Code of Federal Regulations [CFR] Part 800) |
| United States Coast Guard/Department of Transportation | • Navigation Permit 33 CFR 66 |
| U.S. Fish and Wildlife Service | • Endangered Species Act, 16 USC Sections 1531–1544 Section 7 Consultation with the federal lead agency (i.e., Corps) |
| Federal Emergency Management Agency | • Approval of Conditional Letter of Map Revision and Letter of Map Revision |
| ***State*** | |
| California Coastal Commission | • Coastal Development Permit<br>• Consistency Certification, Section 30600(a) of the California Coastal Act, or Waiver of Federal Consistency Provisions |
| California Department of Fish and Wildlife | • Streambed Alteration Agreement, Section 1601 of the California Fish and Game Code<br>• California Endangered Species Act Section 2081 Incidental Take Permit |
| California State Parks | • Use Permit(s) for construction activities |
| California Department of Transportation District 11 | • Encroachment Permit for access to Interstate 5<br>• Approval of plans and construction of Coast Highway 101 improvements |
| Regional Water Quality Control Board | • Water Quality Certification under Section 401 of the Clean Water Act |
| State Lands Commission | • Lease for access |
| State Mining and Geology Board | • Surface Mining and Reclamation Action exemption |
| ***Regional/Local*** | |
| San Diego Air Pollution Control District | • Authority to Construct/Permit to Operate |
| Director of Parks and Recreation | • Certify Environmental Impact Report<br>• File Notice of Determination<br>• Issue Right of Entry |
| Director of Public Works | • NPDES MS4 Permit for Priority Development Project |
| City of Encinitas | • Encroachment and grading permits<br>• Storm water permits<br>• Approval of Coast Highway 101 bridge plans and/or implementation of Coast Highway 101 retrofit<br>• Local Coastal Plan (LCP) coastal development permit<br>• Noise variance or exemption letter |
| City of Solana Beach | • Encroachment and grading permits<br>• Storm water permits<br>• LCP development permit<br>• Noise variance or exemption letter |
| North County Transit District | • Encroachment permit for access to railroad right-of-way |

## California Endangered Species Act (CESA)

CESA (Fish and Game Code Section 2050 et seq.) prohibits the "take" (defined as "to hunt, pursue, catch, capture, or kill") of state-listed species except as otherwise provided in state law. CESA, administered by CDFW, is similar to the federal ESA, although unlike the federal law,

CESA applies incidental take prohibitions to species currently petitioned for state-listing status (i.e., candidate species). State lead agencies are required to consult with CDFW to ensure that their authorized actions are not likely to jeopardize the continued existence of any state-listed species or result in the degradation of occupied habitat.

Under Section 2081, CDFW authorizes "take" of state-listed endangered, threatened, or candidate species through incidental take permits or memoranda of understanding if (1) the take is incidental to otherwise lawful activities, (2) impacts of the take are minimized and fully mitigated, (3) the permit is consistent with regulations adopted in accordance with any recovery plan for the species in questions, and (4) the applicant ensures suitable funding to implement the measures required by CDFW.

Regulatory Action: Prior to implementation of the SELRP, the SELC would be required to initiate formal consultation with CDFW in accordance with Section 2081 to obtain an Incidental Take Permit, if required.

California Environmental Quality Act

CEQA is a California statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. CEQA applies to certain activities of state and local public agencies. A public agency must comply with CEQA when it undertakes an activity defined by CEQA as a "project." A project is an activity undertaken by a public agency or a private activity that must receive some discretionary approval (meaning that the agency has the authority to deny the requested permit or approval) from a government agency that may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment. The environmental review required imposes both procedural and substantive requirements. At a minimum, an initial review of the project and its environmental effects must be conducted. Depending on the potential effects, a further, and more substantial, review may be conducted in the form of an EIR. A project may not be approved as submitted if feasible alternatives or mitigation measures are able to substantially lessen the significant environmental effects of the project.

Regulatory Action: This EIR documents the County DPR's compliance with the requirements of CEQA for the SELRP. The County DPR is the lead agency responsible for certifying the Final EIR and filing the NOD. The County DPR will make a decision whether to issue a right of entry permit for project implementation, and through that discretionary action certify the document. Certification will also include issuance of Findings and a Statement of Overriding Considerations, as required, as well as filing of the NOD. The certification of the EIR by the County DPR would occur prior the issuance of a ROD by the Corps.

California Coastal Act

The CCC was established in 1972 by voter initiative via Proposition 20. The California Coastal Act of 1976 tasked the agency with protection of coastal resources. The state authority controls construction along the state's 1,100 miles of shoreline through the issuance of Coastal Development Permits (CDPs). The CCC assists local governments in implementing local coastal planning and regulatory powers. Under the Act, local governments are encouraged to adopt Local Coastal Plans (LCPs) within their jurisdictions. The LCP consists of a Land Use Plan (LUP) with goals and regulatory policies as well as a set of Implementing Ordinances. Even with an approved LCP, the state CCC occasionally retains jurisdiction over some lands and continues to issue permits in those "retained jurisdictional" areas. The cities of Encinitas, Solana Beach, and San Diego have approved LCPs that address potential materials placement sites. Relevant policies specific to each LCP are discussed below under each jurisdiction. San Elijo Lagoon is located within retained jurisdiction and is not addressed by a local LCP.

Several sections of the California Coastal Act focus on shoreline construction, specifically Sections 30235, 30233, and 30706. All of these sections contain an element pertaining to the protection of existing structures and the protection of public beaches in danger of erosion. Under these sections, construction will be allowed through revetments, breakwaters, groins, or other means that alter natural shoreline processes; dredging of open coastal waters, lakes, wetlands, and other areas will be permitted only where less feasible environmentally damaging alternatives are not available. In particular, in Section 30233, dredging and spoils disposal, planned to avoid significant disruption to marine and wildlife habitats and water circulation, is allowed for restoration purposes. Section 30233 states further that dredge spoils suitable for beach replenishment should be transported to appropriate beaches or into suitable longshore current systems.

Regulatory Action: Prior to implementation of the SELRP, but after certification of the EIR component of this document by the County, the CCC would determine whether to approve a CDP for both the lagoon restoration and materials disposal component of the project, as applicable. It is anticipated the CCC would approve a consolidated CDP addressing the project as a whole; it is possible that the project could obtain a permit from the CCC for work within the lagoon, and individual permits from the cities of Encinitas and Solana Beach for potential sand placement on city beaches.

California Fish and Game Code

Pursuant to California Code of Regulations, title 14, section 630(b)(103), the State Fish and Game Commission declared the property owned by the County and the State to be the San Elijo Lagoon Ecological Reserve.

Under Sections 1601–1603 of the Fish and Game Code, agencies are required to notify CDFW prior to implementing any project that would divert, obstruct, or change the natural flow or bed, channel, or bank of any river, stream, or lake.

*Section 1602 – Streambed Alteration*

All diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake in California that supports wildlife resources are subject to regulation by CDFW under Fish and Game Code Section 1602. Under Section 1602, it is unlawful for any person, governmental agency, or public utility to do the following without first notifying CDFW:

- substantially divert or obstruct the natural flow of, or substantially change or use any material from, the bed, channel, or bank of any river, stream, or lake; or
- deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake.

The Fish and Game Commission defines "stream" as a body of water that flows at least periodically or intermittently through a bed or channel that has banks and supports fish or other aquatic life. This definition includes watercourses with a surface or subsurface flow that supports or has supported riparian vegetation. CDFW's jurisdiction within altered or artificial waterways is based on the value of those waterways to fish and wildlife. In practice, CDFW typically extends its jurisdictional limit to the top of a stream, the bank of a lake, or outer edge of the riparian vegetation, whichever is wider. Riparian habitats do not always have identifiable hydric soils, or clear evidence of wetland hydrology as defined by the Corps. Therefore, CDFW wetland boundaries often include, but extend beyond, Corps wetland boundaries. Jurisdictional boundaries under Fish and Game Code Sections 1600–1616 (CDFW's Lake and Streambed Alteration Program) may encompass an area that is greater than that under the jurisdiction of CWA Section 404. Therefore, jurisdictional waters of the state include jurisdictional waters of the U.S.; federal and state jurisdictions do overlap, but would remain distinct for regulatory administration and permitting purposes. A CDFW Streambed Alteration Agreement must be obtained for any project that would result in an impact on a river, stream, or lake.

Regulatory Action: Prior to implementation of the SELRP, CDFW would determine whether to approve a Section 1602 Streambed Alteration Agreement.

California State Lands Commission Public Trust Doctrine

The California SLC has exclusive jurisdiction over all of California's tide and submerged lands and the beds of naturally navigable rivers and lakes, which lands are sovereign lands, and swamp and overflow lands and State School Lands (proprietary lands). The SLC has statutory authority (Division 6 of the California Resources Code) to approve appropriate uses of state lands under its jurisdiction and is the administrator of the Public Trust Doctrine over sovereign lands.

Sovereign lands may only be used for purposes consistent with this public trust; uses include commerce, navigation, fisheries, open space, wetlands, and other related trust uses. The SLC has an oversight responsibility for tide and submerged lands legislatively granted in trust to local jurisdictions (PRC Section 6301), extending to activities within submerged lands (from mean high tide line) and those within 3 nautical miles offshore.

Regulatory Action: After certification of the EIR, but prior to implementation of the SELRP, the SLC would determine whether to issue a lease to the SELC for activities below the mean high tide line (MHTL), including dredging in the lagoon and for materials disposal/reuse of excavated materials.

Clean Water Act

The principal law that serves to protect the nation's waters is the Federal Water Pollution Control Act, which was originally enacted in 1948. This legislation, more commonly referred to as the Clean Water Act or CWA, underwent significant revision when Congress, in response to the public's growing concern of widespread water pollution, passed the Federal Water Pollution Control Act Amendments of 1972. The 1972 legislation established two fundamental, national goals: eliminate the discharge of pollutants into the nation's waters and achieve water quality that is both "fishable" and "swimmable." The 1972 amendments to the CWA also prohibited the discharge of any pollutant to "waters of the U.S." from any point source (e.g., a discharge pipe) unless the discharge was authorized by a National Pollutant Discharge Elimination System (NPDES) Permit. CWA Section 402 sets forth regulations that prohibit the discharge of pollutants into waters of the U.S. from any point source without first obtaining an NPDES Permit.

CWA Section 303 requires states to adopt water quality standards for all surface waters of the U.S. Under CWA Section 303(d), states, territories, and authorized tribes are required to develop

a list of water bodies that are considered to be "impaired" from a water quality standpoint and develop action plans, referred to as Total Maximum Daily Loads (TMDLs), to improve water quality. TMDL refers to the amount of a specific pollutant that a river, stream, or lake can assimilate and still meet federal water quality standards as provided in the CWA. TMDL accounts for all sources of pollution, including point sources, nonpoint sources, and natural background sources.

Relative to water quality protection and management for the proposed project, several sections of the CWA are important and are fully described in Appendix C:

- Section 303(d) – TMDLs
- Section 401 – Water Quality Certification
- Section 402 – NPDES Program – Municipal Permit
- Section 404 – Discharge of Dredge or Fill Material

Regulatory Action: After consultation and issuance of agency permits, the Corps would determine whether to issue a DA permit pursuant to Section 404 of the CWA (33 USC Section 1344), Section 10 of the RHA (33 USC Section 403), and Section 103 of the MPRSA, as appropriate for the project. The ROD would document the permitting decision by the Corps.

Regulatory Action: After certification of the EIR, but prior to implementation of the SELRP, the RWQCB would determine whether to issue a State Water Quality Certification in accordance with CWA Section 401, in connection with the Corps' DA permits for the discharge of dredge and fill material.

Regulatory Action: San Elijo Lagoon has been 303(d) listed as impaired by eutrophication, indicator bacteria, and sedimentation/siltation. The potential sources of the impairments are point and nonpoint sources. The TMDL action plans have not been completed yet and are scheduled for completion in 2015 for indicator bacteria and 2019 for eutrophication and sedimentation/siltation. No regulatory action is needed at this time.

Regulatory Action: After certification of the EIR, but prior to implementation of the SELRP, the County (or other jurisdiction) must issue a storm water permit under the Code of Regulatory Ordinances (Regulatory Ordinances), Section 67.804(g), as amended, for the selected alternative. Therefore, the standards set forth in the County Stormwater Standards Manual, Regulatory Ordinances Section 67.813, as amended, or the Additional Requirements for Land Disturbance Activities set forth in Regulatory Ordinances, Section 67, would apply to the approved action.

The Stormwater Standards Manual is part of the Watershed Protection, Storm Water Management, and Discharge Control Ordinance (WPO), and it sets out, by project category, what dischargers must do to minimize impacts to surface water quality to a less-than-significant level. A project impact would be considered significant if the design conflicts with one or more of the applicable standards presented in the County Stormwater Standards Manual or the Additional Requirements for Land Disturbance Activities. Requirements include preparation of a Stormwater Management Plan that specifies the way that the best management practices (BMPs) required by the WPO will be implemented, and provides minimum BMPs for the land-disturbing activity. In addition, the County has adopted its Standard Urban Stormwater Mitigation Plan (SUSMP) for Land Development and Public Improvement Projects. The SUSMP is focused on project design requirements and related post-construction requirements for land development and capital improvement projects, and addresses WPO requirements for these project types.

Regulatory Action: After certification of the EIR, but prior to implementation of the SELRP, the County must issue a Permit for Municipal Separate Storm Sewer Systems (MS4) for the selected alternative (Order No. R9-2013-0001; NPDES No. CAS0109266). The MS4 Permit directs the County and other copermittees, including the Cities of Encinitas and Solana Beach, to design and implement requirements of the Hydromodification Management Plan and low-impact development BMPs to reduce storm water runoff from project sites by promoting infiltration and minimizing impervious areas. Each of the three alternatives has an associated increase in impervious surfaces and dry construction areas. A Compliance Plan will describe the non-structural BMPs currently employed and planned in the future (including those for construction activities), and include an implementation schedule.

Coastal Zone Management Act (CZMA)

In 1972, U.S. Congress passed the CZMA to manage the nation's coastal resources. The CZMA is administered by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and Coastal Resource Management. The CZMA balances competing land and water issues in coastal zones through the National Coastal Zone Management Program. Its goal is to preserve, protect, develop, and, where possible, restore or enhance the resources of the nation's coastal zone. Federal activities within or affecting the coastal zone must, to the maximum extent practicable, be consistent with the state's coastal management program.

Regulatory Action: After certification of the EIR and identification of the Least Environmentally Damaging Practicable Alternative (LEDPA), the SELC would request a consistency determination from the CCC, prior to the Corps issuing any permits and the ROD.

Endangered Species Act

The federal ESA of 1973 (16 USC Sections 1531 et seq.) directs USFWS and NMFS (the Services) to identify and protect endangered and threatened species and their critical habitat, and to provide a means to conserve their ecosystems. Section 9 of the ESA makes it unlawful for a person to take a listed animal without a permit. "Take" is defined by the ESA as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct" (16 Section 1532(19). Through regulations, the term "harm" is interpreted to include actions that modify or degrade habitats to a degree that significantly impairs essential behavioral patterns, including breeding, feeding, or sheltering.

Section 7 of the ESA directs the Services to use its existing authority to conserve threatened and endangered species and, in consultation with federal agencies, ensure that any action authorized, funded, or carried out by such agency does not jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. Critical habitat is a specific geographic area(s) that is essential for the conservation of a threatened or endangered species and that may require special management and protection. Critical habitat may include an area that is not currently occupied by the species but would be needed for its recovery. Section 7(a)(2) requires federal agencies to consult with the Services to ensure that they are not undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued existence of listed species. In consultation for those species with critical habitat, federal actions must also ensure that activities do not adversely modify critical habitat to the point that it would no longer aid in the species' recovery.

Regulatory Action: Prior to the issuance of any permits and implementation of the SELRP, the Corps would initiate and complete formal consultation with the Services in accordance with 16 USC Sections 661–666, as needed.

Federal Emergency Management Agency – Conditional Letter of Map Revision and Letter of Map Revision

Executive Order 11988 directs federal agencies to avoid, to the extent practicable and feasible, short- and long-term adverse impacts associated with the occupancy and modification of floodplains, and to avoid direct and indirect support of floodplain development wherever a practicable alternative exists. Furthermore, Executive Order 11988 requires the prevention of uneconomic, hazardous, or incompatible use of floodplains; protection and preservation of natural and beneficial floodplain values; and consistency with the standards and criteria of the National Flood Insurance Program (NFIP). The basic tools for regulating construction in potentially hazardous floodplain areas are local zoning techniques and Federal Emergency

Management Agency (FEMA) floodplain mapping. The Federal Insurance Rate Map (FIRM) is the official map created and distributed by FEMA and NFIP that delineates Special Flood Hazard Areas (SFHAs)—areas that are subject to inundation by a base flood—for every county and community that participates in the NFIP.

For projects that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source, and thus would result in the modification of the existing regulatory floodway, effective Base Flood Elevations, or an SFHA, a Conditional Letter of Map Revision (CLOMR) could be necessary. A CLOMR is FEMA's comment on a proposed project that would make such hydrologic modifications. A Letter of Map Revision (LOMR) is FEMA's modification to an effective FIRM based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway.

Regulatory Action: A CLOMR and LOMR must be prepared by the City of Encinitas and approved by FEMA before beginning any project construction activities, if applicable.

Magnuson-Stevens Fishery Management and Conservation Act, as amended 1996 (Public Law 104-267)

Federal agencies must consult with NMFS on actions that may adversely affect EFH, which is defined as those "waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." NMFS encourages streamlining the consultation process using review procedures under NEPA, Fish and Wildlife Coordination Act, CWA, and/or FESA provided that documents meet requirements for EFH assessments under Section 600.920(g). EFH assessments must include (1) a description of the proposed action, (2) an analysis of effects, including cumulative effects, (3) the federal agency's views regarding the effects of the action on EFH, and (4) proposed mitigation, if applicable.

Regulatory Action: Prior to the issuance of any permits and implementation of the SELRP, the Corps would initiate and complete consultation with NMFS regarding EFH assessment, as needed.

Marine Protection, Research, and Sanctuaries Act (MPRSA)

In 1972, Congress enacted the MPRSA (also known as the Ocean Dumping Act) to prohibit the dumping of material into the ocean that would unreasonably degrade or endanger human health or the marine environment. MPRSA regulates the ocean dumping of all material beyond the territorial limit (three miles from shore) and prevents or strictly limits dumping material that

"would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities." Virtually all material ocean dumped today is dredged material (sediments) removed from the bottom of waterbodies in order to maintain navigation channels and berthing areas. Other materials that are currently ocean disposed include fish wastes, human remains, and vessels. Ocean dumping cannot occur unless a permit is issued under the MPRSA. Section 103 of MPRSA authorizes the Corps to issue permits, subject to EPA approval, for transport and disposal of dredged material (i.e., material excavated from navigable U.S. waters) at designated ocean disposal sites (e.g., LA-5). For other materials, EPA is the permitting agency. EPA is also responsible for designating recommended ocean dumping sites for all types of materials. This act would only be applicable to Alternative 1A as it is the only alternative that included ocean disposal of dredged material.

Regulatory Action: If Alternative 1A were selected for implementation, the Corps would determine whether to issue a DA permit pursuant to Section 103 of the MPRSA.

National Environmental Policy Act, *as amended*

NEPA established a U.S. national policy promoting the enhancement of the environment and also established the President's CEQ. NEPA requires federal agencies to conduct an interdisciplinary analysis of the environmental consequences of their actions early in the decision-making process. NEPA is to ensure that environmental factors are weighted equally when compared to other factors in the decision-making process undertaken by federal agencies. CEQ regulations (40 CFR Parts 1500–1508) set the standard for NEPA compliance. They also require agencies to create their own NEPA implementing procedures. These procedures must meet the CEQ standard while reflecting each agency's unique mandate and mission. Consequently, NEPA procedures vary from agency to agency. Further procedural differences may derive from other statutory requirements and the extent to which federal agencies use NEPA analyses to satisfy other review requirements.

Regulatory Action: This EIR/EIS documents Corps compliance with the requirements of NEPA for the SELRP. The Corps is the federal lead agency responsible for conducting the NEPA process and issuing the ROD. The issuance of a ROD by the Corps would occur after consultation and issuance of agency permits.

National Historic Preservation Act (NHPA)

The NHPA, as amended (16 USC Sections 470–470w), is the fundamental law concerning the protection of cultural resources on federal land, or cultural resources that may be affected by an undertaking that requires federal financial assistance, or a federal permit, license, or approval.

Under the NHPA, its amendments, and its implementing regulations, federal agencies are required to responsibly manage federally owned or controlled cultural resources. Federal agency requirements pertinent to the SELRP are addressed in Section 106 of the NHPA and its implementing regulations.

*Section 106*

Section 106 of the NHPA requires federal agencies to take into consideration the potential effects of their undertakings on historic properties, and is generally applicable when an undertaking is the type of activity that has the potential to affect such properties. Federal undertakings include federal projects, permits, grants, and loans. The purpose of Section 106 is to avoid unnecessary impacts to historic properties from federal undertakings. The Section 106 review process is described in the Advisory Council on Historic Preservation (ACHP) regulations (36 CFR Part 800, as amended August 5, 2004) and Corps implementing regulations at 33 CFR Part 325, Appendix C. Section 106 regulations (36 CFR Section 800.16[1]) define historic properties as any prehistoric or historic district, site, building, structure, or object included, or eligible for inclusion, in the National Register of Historic Places (NRHP) (36 CFR Section 60).

Typically, to be eligible for listing in the NRHP, a property must be at least 50 years old, or have reached 50 years old by the project completion date and retain a high level of integrity of those attributes that contribute to the property's qualifications for the NRHP.

Section 106 and the Corps' implementing regulations provide a systematic mechanism for taking into account the effects on NRHP-eligible resources from actions that are federally sponsored, funded, or licensed. It requires that the SHPO and Native American tribes with historic ties to the area (and possibly other parties) be afforded an opportunity to comment on the undertaking. The SHPO and Native American consultation to comply with Section 106 requirements will be conducted by the Corps.

In February of 2011, the Corps issued guidance specific to compliance with Section 106 titled *Guidelines for Compliance with Section 106 of the National Historic Preservation Act*. The guidelines state that prior to the issuance or authorization of any permit under Section 404 of the CWA or Section 10 of the Rivers and Harbors Act, the Corps must consider the effect the permit may have on historic properties.

Regulatory Action: Prior to issuance of a DA permit pursuant to Section 404 of CWA or Section 10 of the RHA, the Corps would conduct consultation with tribes, SHPO, and the THPO in accordance with 33 CFR 325, Appendix C, and Section 106 requirements.

Rivers and Harbors Act, Section 10

Section 10 of the RHA, administered by the Corps, requires DA authorization for all structures (such as riprap) and activities (such as dredging) in navigable waters of the U.S.

Regulatory Action: The Corps would determine whether to issue a permit for applicable structures and activities. The ROD would document the permitting decision by the Corps.

Surface Mining and Reclamation Act of 1975 (SMARA)

SMARA (PRC Sections 2710–2796) provides a comprehensive surface mining and reclamation policy with the regulation of surface mining operations to ensure that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition. SMARA also encourages the production, conservation, and protection of the state's mineral resources. PRC Section 2207 provides annual reporting requirements for mines in the state, under which the State Mining and Geology Board is also granted authority and obligations.

Regulatory Action: It is anticipated that the State Mining and Geology Board would issue an exemption from the requirements of SMARA under PRC Section 2714.

A number of infrastructure improvements are planned within the lagoon by other agencies. These include double-tracking the railroad tracks extending through the lagoon as part of the Los Angeles to San Diego Proposed Rail Corridor Improvements (LOSSAN) project and replacement of the I-5 bridge as part of the North Coast Corridor Project, proposed by the San Diego Association of Governments (SANDAG) and the California Department of Transportation (Caltrans), respectively. A Public Works Plan (PWP)/Transportation and Resource Enhancement Program (TREP) is being prepared by Caltrans and SANDAG to address comprehensive, system-wide improvements in this coastal corridor. As mitigation for corridor improvements, regional habitat enhancements to lagoons could be implemented as identified in the PWP/TREP, including the SELRP. Senate Bill 468 mandates that transportation improvements and regional habitat enhancements within the north coast corridor occur concurrently, unless construction in phases would result in an environmentally superior alternative to concurrent construction. Consistent with Senate Bill 468 (Kehoe), I-5 and railroad bridges over the lagoon would occur concurrently with the SELRP. These bridges are not part of the lagoon restoration project and the environmental analysis for these project proposed (and constructed) by others is addressed in other documents (SCH No. 2010111008/SCH No. 2004101076).

## 1.6 EIR/EIS SCOPE, CONTENT, AND ORGANIZATION

### EIR/EIS Scope and Content

The scope of analysis and the content for this EIR/EIS were established based on the professional judgment regarding the nature of the SELRP, Appendix G of the CEQA Guidelines, the Corps' standard NEPA practices, and comments received during the NOP/NOI review process as detailed in Section 1.4.

The CEQA scope of analysis for the EIR/EIS addresses the proposed restoration project, including materials disposal and/or reuse, and is primarily based on thresholds of significance as identified in the CEQA Guidelines, Appendix G. For some issue areas, these thresholds were modified or supplemented to accommodate project-specific conditions. Because the SELRP is water dependent and cannot be implemented outside of the Corps' geographic jurisdiction, the NEPA scope of analysis also includes the complete restoration project as proposed within this EIR/EIS. The Corps generally has not adopted the CEQA thresholds of significance and has applied additional federal requirements, as appropriate, into this EIR/EIS.

This EIR/EIS evaluates the direct, indirect, permanent, temporary, and cumulative effects of the proposed SELRP and alternatives, and proposes mitigation measures to minimize those effects, as feasible. The following issues were determined to be potentially significant and are, therefore, evaluated in Sections 3.1 through 3.16 of this EIR/EIS:

- Land Use/Recreation
- Hydrology
- Oceanography/Coastal Processes
- Water and Aquatic Sediment Quality
- Geology/Soils
- Biological Resources
- Cultural Resources
- Paleontological Resources
- Visual Resources
- Traffic, Access, and Circulation
- Air Quality
- Noise
- Socioeconomics/Environmental Justice
- Public Services and Utilities
- Hazardous Materials and Public Safety
- Global Climate Change and Greenhouse Gas Emissions

The analysis focuses on the substantial adverse or significant environmental effects and their relevance to the decision-making process for the proposed project and its alternatives. NEPA requires the federal lead agency to rely on a "scientific and analytical basis for the comparison of alternatives" (40 CFR Section 1502.16) in making its decisions. Environmental impacts, as

defined by CEQA, include physical effects on the environment. In this document, the term is used synonymously with environmental effects, or impacts, under NEPA. The CEQA Guidelines (Section 15360) define the environment as follows:

> The physical conditions which exist within the areas which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

This definition does not include economic impacts or social impacts, although NEPA does require an evaluation of socioeconomics and environmental justice. Therefore, these sections are included in this EIR/EIS.

**EIR/EIS Organization**

This EIR/EIS is organized so the reader can obtain fundamental information about the proposed project and its specific impacts. Impacts are described under each of the environmental resource areas in Sections 3.1 through 3.16. Detailed technical and additional background information is provided in the appendices. Each of the chapters in this document is briefly described in Table 1-4.

## Table 1-4
## Organization and Contents of EIR/EIS

| EIR/EIS Chapter/Section | | Content Description |
|---|---|---|
| ES | Executive Summary | Provides an overview of the proposed project and its alternatives. Summarizes major findings and conclusions of the environmental analysis. Discusses areas of controversy and issues to be resolved. |
| 1.0 | Introduction | Provides a brief overview of the proposed project. Outlines the purpose, need, and objectives of the proposed project. Identifies the lead, responsible, and trustee agencies. Outlines the scoping process and comments received. Discusses compliance with other applicable statutes and permit requirements. Summarizes the scope, content, and organization of the document. |
| 2.0 | Description of the Proposed Project and Alternatives | Provides a detailed description of the proposed project and its alternatives, including proposed materials disposal/reuse scenarios. Describes the alternatives development process and screening criteria for the selection of alternatives carried forward for detailed analysis in this EIR/EIS. Summarizes construction methods, project design features and minimization measures, and plans for future monitoring and maintenance. |
| 3.0 | Affected Environment and Environmental Consequences Introduction | Describes CEQA and NEPA baseline conditions used to determine the degree of environmental impacts for each issue area in Sections 3.1–3.16. Outlines the organization of each section. |
| 3.1–3.16 | Resource Analyses | Describes, for each environmental resource area, the affected environment (including the baseline conditions), the criteria for judging whether an impact is significant under CEQA, the impact assessment methodology, the environmental consequences that would result from each alternative, the applicable mitigation measures that would eliminate or reduce significant impacts as defined under CEQA and substantial adverse effects under NEPA, and mitigation monitoring requirements. Subsections for Affected Environment and Environmental Consequences in each resource discussion are consistent with NEPA terminology but correspond to Existing Conditions and Impact Analysis under CEQA. |
| 4.0 | Comparison of Alternatives | Provides a comparison of the project alternatives, summarizing the key differences between each alternative. |
| 5.0 | Cumulative Impacts | Provides an analysis of cumulative impacts under CEQA and NEPA to determine whether the proposed project and each alternative contribute to an incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. |
| 6.0 | Other CEQA and NEPA Considerations | Includes a discussion of significant, irreversible changes to the environment from project implementation; growth-inducing impacts; and the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity. |
| 7.0 | List of Preparers | Lists the individuals involved in preparing this EIR/EIS. |
| 8.0 | Agencies and Individuals Consulted | Lists the agencies and individuals consulted during the preparation of this EIR/EIS. |
| 9.0 | Literature Cited | Identifies the documents used in preparing this EIR/EIS. |
| 10.0 | Abbreviations | Provides the full names for acronyms and abbreviations used in this document. |
| Appendices (separately bound document) | | Present additional background information and technical detail for several of the resource areas. |

## 1.7 AVAILABILITY OF THE DRAFT EIR/EIS

This Draft EIR/EIS will be available at the County Department of Parks and Recreation offices located at 5500 Overland Avenue, Suite 410, San Diego, CA 92123, and online at http://www.co.san-diego.ca.us/parks/public_review.html for a 60-day public review period from August 1, 2014 through September 29, 2014.

The Draft EIR/EIS will also be available at the following locations:

Cardiff-by-the-Sea Branch Library
2081 Newcastle Avenue
Cardiff-by-the-Sea, CA 92007

Solana Beach Branch Library
157 Stevens Avenue
Solana Beach, CA 92075

San Elijo Lagoon Nature Center
2710 Manchester Avenue
Cardiff-by-the-Sea, CA 92007

Comments from agencies and individuals are invited regarding the information contained in this EIR/EIS. Where possible, those responding should provide the information they feel is lacking in the EIR/EIS or should indicate where that information may be found. Written comments regarding this EIR/EIS should be directed to the following:

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County of San Diego Department of Parks and Recreation
5500 Overland Avenue, Suite 410
San Diego, CA 92123
megan.hamilton@sdcounty.ca.gov

or

Ms. Meris Bantilan-Smith
U.S. Army Corps of Engineers
Los Angeles District, Regulatory Division
Carlsbad Field Office
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Following the 60-day period of circulation and review of the Draft EIR/EIS, written comments and responses to the comments will be incorporated into a final document prior to certification of the EIR. The Final EIS will be circulated again for 30 days prior to the Corps' issuance of a ROD.